

JAN 18 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FELIPE MARES-HERNANDEZ,

Defendant - Appellant.

No. 05-30290

D.C. No. CR-04-00143-WFN

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Felipe Mares-Hernandez appeals the sentence imposed following his guilty plea to being an alien found in the United States in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Mares-Hernandez contends that the district court violated his Sixth Amendment rights by imposing a sentence in excess of the two-year maximum set forth in 8 U.S.C. § 1326(a) based on a prior conviction that was neither proved to a jury nor admitted during the plea colloquy. This contention is foreclosed. *See United States v. Von Brown*, 417 F.3d 1077, 1078-79 (9th Cir. 2005) (per curiam). *See also United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that we continue to be bound by the Supreme Court's holding in *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), that a district court may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt).

Mares-Hernandez also contends that the 70-month sentence imposed is unreasonable. Reasonableness is the standard by which we review sentences imposed, such as this one, after the Supreme Court in *United States v. Booker*, 125 S. Ct. 738, 757 (2005), rendered the Sentencing Guidelines advisory. *United States v. Ameline*, 409 F.3d 1073, 1089 (9th Cir. 2005). Mares-Hernandez asserts that the sentence is unreasonable because the record is insufficient to support the district court's reasoning and the sentence is greater than necessary. He does not specify in what respect the record is insufficient. Our review indicates that the district court properly considered the advisory Guidelines and the factors set forth

in 18 U.S.C. § 3553(a). The sentence imposed, which is at the bottom of the applicable Guidelines range, is not unreasonable.

AFFIRMED.